Before the
Federal Communication Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of US LEC Corp.	)	
For Declaratory Ruling	)	**CC Docket No. 01-92**
Regarding LEC Access Charges	)	
For CMRS Traffic	)	

Reply Comments Of:
Fred Williamson and Associates, Inc. ("FW&A")
On behalf of:

Chouteau Telephone Company, an Oklahoma ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC
(Collectively, "ILECs")

November 1, 2002

Background

US LEC requests that the Commission issue an expedited declaratory ruling reaffirming that LECs, whether Incumbent Local Exchange Carriers (ILECs) or Competitive Local Exchange Carriers (CLECs) are entitled to recover access charges for interexchange traffic that passes from CMRS providers to Interexchange Carriers (IXCs), (or vise versa) via the network of the LEC. On the basic issue of whether an ILEC or CLEC (or for that matter a wireless provider) is entitled to recover access charges from an IXC, nearly all commenters agree[1] that all LECs (ILECs and CLECs) and wireless providers that provide originating and/or transiting and/or terminating facilities that are used by an IXC to complete the IXC's interexchange calls, are entitled under Commission rules to receive access charge compensation from the IXC. The Commission must reaffirm this basic tenant of its rules.

FW&A has no first hand knowledge of the specific issue involving US LEC, CMRS providers and ITC Delta Communications. However, AT&T asserts that the issue is: "…whether a CLEC, by inserting itself between the CMRS carrier and the ILEC tandem switch, can impose an *additional* access charge on IXCs priced at the full amount of the Commission's maximum benchmark rate…"[2] If this is the specific and narrow issue presented in the US LEC petition, and if US LEC is providing service as authorized by the State and Federal Commissions and appropriately routing the IXCs calls, then it appears to FW&A that US LEC is entitled to access charge compensation <u>only for the</u>

[1] Comments of Alliance of Incumbent Rural Independent Telephone Companies, pages 2 to 3; ICORE, pages 3 to 4; McLeod USA, Focal and Cavalier, pages 1 to 2; Minnesota Independent Coalition, page 1; Montana Local Exchange Carriers, page 2; NTCA, page 10; OPASTCO, page 8; Rural Iowa Independent Telephone Association, page 2; Rural Telecommunications Cooperatives, pages 1 to 2; SBC Communications, page 6; Sprint, page 2; Verizon, page 11; Warinner, Gessinger and Associates, page 1.
[2] AT&T Corp. comments, page 2.

access facilities it provides to the IXC, and is not entitled to access recovery for functionalities that are not provided.

Regulatory Intervention To Impose Bill-And-Keep Harms Consumers And May Cause Further Market Failures

In its comments, Qwest observed that: "Given the steady stream of difficult issues that continue to arise under the current rules, the Commission should move quickly to adopt a unified bill-and-keep regime."[3] Qwest asserts, incorrectly that its bill-and-keep "at the edge" proposal would:

- "…avoid the need for interconnection between carriers exchanging relatively small amounts of traffic…"[4]
- Alleviate the so called terminating access monopoly under which allegedly extra-compensatory rates are charges by rural ILECs by: "…requiring a rural ILEC to recover from its end users any costs of calls received from CMRS providers (or any other type of carrier)."[5]
- Alleviate the arbitrage: "…incentives inherent in the Commission's rules that have led to repeated requests for the Commission to intervene in intercarrier compensation disputes."[6]

Finally, Qwest asserts that: "Bill-and-keep …would permit carriers to compete solely on their economic and technological merits, rather than based on advantages conferred by regulation."[7]

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[3] Qwest comments, page 2.
[4] Id., page 3.
[5] Id., page 5
[6] Id.

These comments by Qwest are wrong and display a complete lack of understanding of the current intercarrier compensation regime and the circumstances surrounding the interconnection issues that have been brought to the Commission. In fact, at odds with Qwest's comments, the current intercarrier compensation regime is a unified regime that, if enforced and supported by the Commission, without exceptions and exemptions, would operate properly and lead to efficient and economic competition. The current intercarrier compensation regime involving access charges or local reciprocal compensation relies on the following basic premises:

- The provider selling retail service to an end user customer receives revenues from that customer, which are used to pay for its own, or another carriers network costs of originating, transporting and terminating the customer's call.
- Bill-and-keep is only appropriate when retail service providers have roughly equivalent levels of network costs and terminating traffic.
- Bill-and-keep is not appropriate when (a) The provider's costs are significantly different, (b) Terminating traffic levels are not in rough balance and (c) When the facilities of a carrier that is not the service provider are used by a service provider (IXC, CLEC, LEC or CMRS provider) to originate, transport or terminate its calls.

Qwest's rationale for eliminating this economically rational regime, in which retail providers pay underlying carriers for the facilities that are used to complete the retail providers calls, is completely wrong and provides no justifiable basis to adopt bill-and-keep.

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[7] Id., pages 6 to 7.

First, "a small amount of traffic" is in the eye of the beholder. Qwest's view of a small amount of originating or terminating traffic may represent a significant level of network usage and thus facility cost to a rural ILEC or CLEC at the "edge of the network". For instance, in Oklahoma, if the costs of the "small amount of CMRS traffic" were recovered, as advocated by Qwest from rural ILEC end users, the rates for each and every rural ILEC end user would have to be increased by approximately $2.50 per loop per month. This clearly would not represent a "small rate increase" to the rural end user. Retail service providers such as Qwest and others should not be allowed to avoid paying for the rural ILEC facilities they use to complete their calls simply because they view the traffic levels as small.

Second, the notion that terminating access monopolies exist in which rural ILECs and/or CLECs charge "extra-compensatory rates is a myth which has no basis in fact. Companies such as Qwest perpetuate this myth in order to justify uneconomic proposals (bill-and-keep) that would allow them to use rural ILEC and/or CLEC and/or CMRS provider facilities for free. This approach fails to compensate LECs for costs incurred for providing quality networks in rural areas and only serves to increase the profit margins of long distance companies such as Qwest. Moreover, recent FCC and State Commission actions to (a) Reduce ILEC access rate levels, in conjunction with implementation of universal service funding for loop and local switching port costs and (b) To constrain CLEC access rate levels to the levels charged by the ILECs have eliminated any alleged "extra-compensatory" terminating access charges. The former levels of access charges were not "extra-compensatory" as alleged by Qwest. Rather, access charges recovered legitimate costs the LECs incur to provide service. A significant portion of these costs, as a result of Commission actions, have been removed from access charges and are now recovered from end-user charges or the Universal Service Fund. The Commission has also enacted rules that will further reduce access charges. Thus the alleged concern raised by Qwest has already been dealt with.

Finally, it is not a failure of the current intercarrier compensation regime, but Commission intervention and in some cases lack of enforcement of its own rules that has led to repeated intercarrier compensation disputes and requests for Commission intervention. For instance:

1. *Access Charge Arbitrage and Local Compensation Disputes Arising From the FCC's Exemption For ISP Internet Traffic.* Access traffic was inappropriately treated as local traffic and subjected to local terminating compensation. Billions of dollars have flowed to CLECs who had no intention of serving residential customers, but were simply allowed to game the system by serving only ISPs in order to improperly receive terminating compensation from LECs. It is difficult to determine how this benefited consumers, and it clearly harmed the LECs financially. Many of the CLECs and ISPs, however, who apparently the regulators hoped, via the improper subsidies, would actually stay in the market and compete, have either taken the money and ran, or gone bankrupt.

2. *Arbitrage and Gaming of the Compensation System Caused by Commission Actions That Are Forcing Differing and Uneconomic Compensation Rate Levels.* Access and thus toll rates have been driven to uneconomically low levels through the mistaken notion that these actions would benefit consumers and further competition. Removing the recovery of real costs, e.g., the elimination of the "transport

interconnection charge" has artificially lowered transport rates. Likewise, the costs of access and toll have been artificially lowered in the "economically efficient" effort to remove subsidies from access and toll rates, and to base these rates on forward looking costs. Real and actual costs of LECs have been ignored in this process and because they were labeled "subsidies", have been and continue to be recovered not from toll and access services, but from end user consumers. The result of these manipulations, urged on by LEC competitors through self serving arguments has been inefficient competitive network entry, substantive construction of facilities and overcapacity due to regulatory decisions causing improper market signals, and ultimately the bankruptcies that are now occurring in the telecommunications industry. The effect in the end has harmed most consumers through higher rate levels and may harm LECs through non-payment of access services by bankrupt carriers such as WorldCom. In a similar vein, the actual cost of local competitive entry for CLECs has been artificially manipulated. Asymmetric rules favoring CLECs and CMRS providers have been created in order to attempt to induce "managed" competition. For instance, CLECs are allowed to purchase Unbundled Network Elements (UNEs), as well as transport and termination facilities at rates that are based on forward-looking costs. These rate levels in no way recover the real cost of the LECs and allow CLECs and CMRS providers to avoid (arbitrage) access rate levels if the "local compensation" rate levels are forced to lower levels through regulatory mechanisms such as forward-looking costs.

3. *Arbitrage of Access Rates Through Regulatory Intervention to Manipulate and Manage CMRS Interconnection.* CMRS providers are inappropriately allowed to

deliver traffic for termination without seeking an interconnection agreement and without offering to pay for the facilities used to terminate their calls (de facto and unilateral bill-and-keep). When a tariff is sought to recover the costs of the network facilities used by the CMRS providers, those providers file petitions at the Commission to have those tariffs declared unlawful. On the other hand, when an interconnection agreement is sought by the ILEC, CMRS providers supported by FCC policies as interpreted by certain state commissions, require ILECs who provide no service beyond their local exchange boundary to treat IXC presubscribed (access) traffic that is originated and terminated within an MTA as if it were ILEC local traffic. This treatment is at odds with the Act and FCC rules that (a) Require that this traffic be handed off to a customer's presubscribed carrier and (b) Exempts this IXC traffic from intraMTA reciprocal compensation requirements because the IXC, not the ILEC is the service provider.

Urged on by apparent Commission compliance in schemes to arbitrage or eliminate access rates (bill-and-keep proposals in the Unified Intercarrier Compensation NPRM, CC Docket 01-92), users of rural ILEC network facilities are finding new and novel, but inappropriate ways to avoid paying for the use of the network. For instance, in a recent petition to the Commission[8], CLECs and CMRS providers are attempting to obtain Commission approval to impose differing rating and routing points or Virtual NPA-NXX arrangements. Supporters of these arrangements are proposing that the Commission allow a local telephone number associated with a CMRS or CMRS switch (rating point) that may be in Oklahoma, in another state in the United States, or for that matter in a foreign country, to be virtually assigned to an ILEC local switch (routing point) in a different state or area. The LEC would be required to allow any end user dialing the virtual number, to be routed via a third party carrier such as SWBT, Qwest, or BellSouth to the CLEC or CMRS switch location where the number actually belongs, whether that is in Oklahoma, in another state, or in a foreign country, on a local-calling, toll free basis. These arrangements are inappropriate because they:

- Are simply a ruse to avoid legitimate retail tariffed charges for providing interexchange calling. In effect, they are uneconomic toll bypass. They would eliminate toll service provided by IXCs under the Commission's equal access provisions and are at odds with Commission Orders
- Destroy the current jurisdictional (local, intrastate, interstate and international) traffic distinctions by inappropriately classifying intrastate toll, interstate toll and international traffic as local and (b) Thus cause incorrect intercarrier compensation (local reciprocal compensation rather than interstate or intrastate access).
- Require that, on an uneconomic and anti-competitive basis, ILECs transport interexchange calls (as local calls) to any location designated by the CMRS provider or CLEC for free, (b) Pay transiting access to all intermediate carriers that transport the calls and (c) Pay reciprocal compensation to the CMRS provider or CLEC for the privilege of providing this free service. These lost revenues and costs, if recovered from ILEC end users, would cause the end users to inappropriately subsidize the competitive services of the CLECs and CMRS providers.

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[8] Sprint Corp. Petition in CC Docket No. 01-92, DA 02-1740.

- Are at odds with existing network routing governed by the LERG. The effect of this inappropriate manipulation and misuse of the LERG is to fool the LERG and LEC local switches into routing interexchange toll calls as local calls.
- Provide an anti-competitive benefit to CMRS carriers and CLECs. They would be able to obtain free calling and actually gain compensation revenue for interexchange landline to wireless calls, while their competitors, the IXCs, must still charge toll charges to their customers for similar interexchange calls in order to recover their costs of providing their landline to landline service. Additionally, IXC toll providers would further be disadvantaged because they would no longer receive toll revenue for any interexchange virtual NPA-NXX calls. This circumstance would further disincent IXCs from serving rural LEC exchanges that have lower toll volumes than urban exchanges.

Commission policies that have been adopted as discussed above or proposed,[9] have led to and continue to cause and incent (a) Arbitrage of access charges, (b) Non-compensatory intercarrier compensation rate levels and (c) Attempts by carriers to misuse the intercarrier compensation process to avoid paying for the their use of rural ILEC network facilities. These policies were adopted based on self-serving IXC, CMRS provider and CLEC rhetoric that claimed that bill-and-keep or lower non-compensatory rates, exemptions from rates, reclassification of traffic from interexchange to local, misrouting of traffic, etc, would bring competition and lower rate levels for end users. These claims have, however, proved hollow and untrue. The fruits of these policies are beginning to be clear. CLECs who were artificially enticed into the market by regulatory mandated and

[9] The bill-and-keep proposals in the CC Docket 01-92 NPRM, In the Matter of Developing a Unified Intercarrier Compensation Regime.

artificially low entry costs and improperly applied universal service funding are beginning to exit the market through bankruptcies. LECs have been financially harmed through the loss of access revenues through arbitrage and because at the artificially low UNE and transport and termination prices, they are unable to recover their real costs of providing facilities. Universal service funding that should flow to offset high network costs of LECs in rural areas is instead being siphoned off by competitors who have no need for this support, and concerns are emerging that the funds may be unsustainable. Again, the losers, as a result of these mistaken regulatory policies are, or will be, rural consumers and the LECs who, as the Carrier of Last Resort (CLR), serve these consumers.

The Current Intercarrier Compensation Regime Must Be Enforced and Supported By The Commission In Order To Avoid Significant Harm To Rural ILEC End Users

Rural ILECs represented by FW&A obtain approximately 50% in Kansas and 70% in Oklahoma of their total revenue or $60 in Kansas and $85 in Oklahoma, per loop per month from intercarrier compensation.[10] This compensation is used to:

- Offset the high cost of providing service in rural areas and thus to aid in the maintenance of just, reasonable and affordable local exchange rates.
- Provide a high quality, well maintained network.

[10] In Kansas, approximately $30 per loop per month is obtained from IXCs and other retail providers for the use of the ILECs' originating access facilities, while approximately $30 per loop per month is obtained from IXCs and other retail providers for the use of the ILECs' terminating access facilities. In Oklahoma, approximately $50 per loop per month is obtained from IXCs and other retail providers for the use of the ILECs' originating access facilities, while approximately $35 per loop per month is obtained from IXCs and other retail providers for the use of the ILECs' terminating access facilities.

- Provide revenues that allow the rural ILEC to upgrade its network and provide broadband facilities and other new technologies for the use of customers connected to its network.

If the bill-and-keep "at the edge" Qwest proposal were adopted, rural ILEC local exchange rates would increase by $60 in Kansas and $85 in Oklahoma per loop per month. If end users find these increases unaffordable and disconnect from the network, the goal of universal service will suffer, service quality may deteriorate, new technologies would likely not be provided and the ILEC may not be able to continue its Carrier Of Last Resort responsibilities. Additionally, if the current intercarrier compensation is not supported and enforced and continued arbitrage is allowed and non-compensatory intercarrier compensation rates are mandated by the Commissions, similar consequences will, over time, occur.

The current intercarrier compensation regime must be maintained and enforced in order to avoid loss of these essential revenues for ILECs and because the regime meets all of the Commission's objectives for a compensation regime. The current regime:

- **Encourages economic efficiency**. Retail rates reflect all of a call's cost. The service provider uses those revenues to pay its own costs and the network costs of carriers whose facilities are used to complete the call. Retail rates are consequently established at appropriate market levels that insure correct entry and exit market signals are given to competitors.
- **Encourages investment in interconnected networks and encourages, rather than discourages, broadband investment.** Carriers, both LEC and CLEC, are incented to place appropriate levels of investment (based on traffic levels) and

interconnect their networks because they will be paid for the use of their facilities to originate, transport and terminate calls originated by service providers.

- **Encourages the efficient development of market-based rather than contrived competition**. Because appropriate market signals are given as to the costs of completing calls, competitive carriers are able to determine if it is appropriate for them to enter markets and provide service at competitive retail rate levels. CLECs will focus business plans on and be incented to serve all customers rather than customers that originate calls to avoid terminating charges and to gain a competitive advantage. Competition will, in conformance with the Act, insure that end users are not forced to subsidize competitive service providers.
- **Minimizes regulatory intervention.** The major issues with the current intercarrier compensation regime are rate level issues. The LEC and CLEC access charge proceedings as well as the CMRS and ISP Intercarrier Compensation proceedings have largely resolved these issues. Expediency in the form of bill-and-keep that may minimize regulatory intervention should not be the governing factor in evaluating a compensation regime. Tariffs and contractual arrangements, which are the basis of the current intercarrier compensation regime, will from time to time be the subject of disputes between the parties. The proper way to resolve these disputes is through a review of the agreement by the appropriate regulatory or judicial authority.

This compensation regime does not:

- Create opportunities for regulatory arbitrage. These have been created by the FCC and state pricing policies.

- Cause terminating access monopolies. With recent and upcoming access reductions, this is a non-issue.
- Discriminate among differing provider networks. When allowed to operate properly, the current regime would charge all providers (Wireless, wireline, etc.) the same costs the ILECs incur to use necessary facilities.
- Inappropriately incorporate inefficient rates (non-traffic sensitive costs recovered on a traffic sensitive basis) that distort the structure and level of end user rates. To the extent these costs are recovered in FCC and state compensation rates, market based negotiations, rather than FCC intervention, can incorporate mechanisms (i.e., capping compensation payments) to deal with any perceived problems.

Recommendations

The Commission must reaffirm that IXCs and others using the LEC network facilities to originate and/or transport and/or terminate their customers' calls must pay access charges to the LECs for the use of these facilities. Further, in order to eliminate the current confusion caused by prior Commission actions and proposals, the Commission should:

1. **Support and enforce the current intercarrier compensation regime. Bill-and-keep for local or access calling must be rejected**.

Maintenance of and proper application of the current intercarrier compensation regime will (a) Avoid the competitive market distortions that occurred with compensation for ISP Internet-bound traffic, (b) Avoid subsidization of competitive services by end users,

(c) Provide appropriate market entry and exit signals to competitors and (d) Insure that competitors will not have a disincentive to serve all market segments (residential and business, rural and urban). On the other hand, regulatory intervention to impose bill-and-keep compensation will (a) Only promote competition for compensations sake,
(b) Distort the market, ultimately resulting in a lack of competition and efficiency, particularly in rural areas and (c) Harm rural consumers and ILECs.

2. **Clarify that (a) Rural ILECs are not required to treat intraMTA IXC presubscribed traffic as local ILEC originated traffic, (b) Compensation is appropriate when an imbalance of traffic has been demonstrated and (c) That virtual NPA-NXX arrangements are not allowable.**

These clarifications will preserve the current access compensation regime, avoid severe harm to rural ILECs and their customers and will not harm CLECs or CMRS providers.

3. **Revise its interconnection costing policies for interconnection in rural ILEC service areas. Rural ILEC interconnection rates must be based on their costs, not forward-looking costs. Competitors should be required to base their rates for rural ILEC interconnection on either their costs or forward looking costs, capped at the rural ILEC level.**

This action (a) Will avoid the negative consequences of forward-looking costing that are occurring in non-rural ILEC areas, (b) Will insure that rural consumer rates do not subsidize rates of competitive services by allowing rural ILECs to recover their actual costs of interconnection from users of their network facilities, and (c) Provides the appropriate costing information to service providers for market entry decisions, and

(d) Does not create inappropriate or anti-competitive barriers to interconnection for service providers.

4. Avoid further regulatory imposed access rate reductions for rural ILECs.

Past access rate reductions have contributed to the current instability in the telecommunications market. Further reductions, beyond those already planned, (a) Will substantially harm rural customers by further increasing the rates they must pay, (b) Are economically inappropriate, (c) Are placing substantive pressure on federal and intrastate universal service funding (increasing the funds to unsustainable levels) and (d) Are not benefiting consumers but instead are creating an environment in which toll service is unprofitable and service providers are exiting the market.

Respectfully submitted on behalf of the ILECs by,

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